

**DRAFT FINAL PROPOSED RULE:
HEARING AND PUBLIC COMMENT PERIOD**

Notice Number 2015-152

Rule Number He-W 553.01 – 553.06

1. Agency Name & Address:

**NH Dept. of Health & Human Services
Office of Medicaid Business and Policy
129 Pleasant Street
Concord, NH 03301**

2. RSA Authority: RSA 161:4-a, X

3. Federal Authority: _____

4. Type of Action:

Adoption _____

Amendment _____

Repeal _____

Readoption _____

Readoption w/amendment X

5. Short Title: **Home Health Services**

In accordance with RSA 541-A:11, I(c), public comment is being solicited on a draft final proposed rule in a rulemaking proceeding for which notice first appeared in the Rulemaking Register on September 10, 2015 under Notice Number 2015-152.

6. A public hearing has therefore been scheduled for:

Date and Time: **Not Applicable, no public hearing scheduled**

Place: **N/A**

7. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **Friday, May 20, 2016**

☒ Fax

☒ E-mail

☐ Other format (specify):

8. Contact person for copies of the draft final proposed rule and questions including requests to accommodate persons with disabilities:

Name: **Michael Holt**

Title: **Rules Coordinator**

Address: **Dept. of Health and Human Services
Administrative Rules Unit
129 Pleasant St.
Concord, NH 03301**

Phone #: **271-9234**

Fax#: **271-5590**

E-mail: michael.holt@dhhs.state.nh.us

TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

The proposed rules may be viewed and downloaded at:

<http://www.dhhs.nh.gov/oos/aru/comment.htm>

CHAPTER He-W 500 MEDICAL ASSISTANCE

PART He-W 553 HOME HEALTH SERVICES

Adopt He-W 553.01 to read as follows:

He-W 553.01 Purpose. The purpose of this part is to prescribe the requirements of home health services under the New Hampshire medicaid state plan.

Readopt with amendment He-W 553.01, effective 9/11/07 (Document #8972), as amended effective 3/18/08 (Document #9105), as amended effective 7/1/12 (Document #10139), and renumber as He-W 553.02, to read as follows:

He-W 553.02 Definitions.

(a) “Department” means the New Hampshire department of health and human services.

(b) “Direct care time” means the time a licensed nursing assistant (LNA), registered nurse (RN), or licensed practical nurse (LPN) spends with one recipient during which home health services are provided only to that individual recipient during a visit at the recipient’s residence.

(c) “Home health aide” means an LNA, licensed in accordance with RSA 326-B.

(de) “Home health aide services” means services provided to a recipient which constitute hands-on care and are required to maintain the recipient’s health, facilitate treatment of the recipient’s medical condition, illness or injury, and when performed by a LNA, are provided under the supervision of a registered nurse RN or licensed practical nurse LPN.

(ed) “Home health care provider agency” means any organization, home health agency or business entity engaged in arranging for or providing home health services skilled nursing services, home health aide services, or other therapeutic services as described in RSA 151:2-b(I) and 42 CFR 440.70(d) and is participating enrolled medicaid provider in accordance with He-W 553.043.

(fe) “Home health services” means skilled nursing services, and home health aide services, physical therapy, occupational therapy, speech pathology, and audiology services provided by a licensed therapy provider in accordance with He-W 568.

(g) “Independent nurse” means an RN or LPN who is not an employee with or an independent contractor of a home health care agency and is qualified to provide home health aide or skilled nursing services.

(h) “Light housekeeping” means preparing meals for the recipient, cleaning the recipient’s room and bathroom, and changing the recipient’s bed linens.

~~(f) “Licensed nursing assistant” means an individual who is licensed in accordance with RSA 326-B to provide home health aide services.~~

~~(g) “Low Utilization Payment Adjustment (LUPA) rate” means the national per visit amount by discipline established for Medicare home health services and published annually in the Federal Register by the Centers for Medicare and Medicaid Services.~~

(ih) “Medicaid” means the Title XIX and Title XXI programs administered by the department, which makes medical assistance available to eligible individuals.

(ji) “Non-routine supplies” means those supplies necessary to complete specific medical treatments ordered by a physician, such as ostomy supplies, IV supplies, catheters and catheter supplies, syringes and needles, sterile dressings, and wound care supplies, and does not include routine supplies.

(kj) “Recipient” means an individual who is eligible for and receiving medical assistance under the medicaid program.

(lk) “Routine supplies” means those supplies used incidentally in the course of a visit and include gloves, alcohol wipes, blood drawing supplies, adhesive and paper tape, and non-sterile dressings.

(ml) “Skilled nursing services” means ~~a service~~s that must be provided by ~~an registered nurse~~ RN or a licensed practical nurse LPN because the nature of the service is inherently complex or the recipient’s condition is such that the service can be safely and effectively provided only by a RN or LPN skilled nurse.

(nm) “Title XIX” means the joint federal-state program described in Title XIX of the Social Security Act and administered in New Hampshire by the department under the medicaid program.

(on) “Title XXI” means the joint federal-state program described in Title XXI of the Social Security Act and administered in New Hampshire by the department under the medicaid program.

(pe) “Unit” means 15 minutes.

(qp) “Visit” means a personal encounter with the recipient by staff of a home health care ~~provider~~ agency for the purpose of providing a covered service(s).

Readopt with amendment He-W 553.02 – 553.06, effective 9/11/07 (Document #8972), and renumber as He-W 553.03 – 553.07, to read as follows:

He-W 553.0~~32~~ Recipient Eligibility. A recipient shall be eligible to receive home health services in accordance with 42 CFR 441.15(c) if all of the following criteria are met:

(a) The recipient is under the care of a physician;

(b) The recipient requires home health services as ordered by his or her physician and documented in a written plan of care; and

(c) The recipient resides in his or her primary or temporary residence, excluding a hospital, nursing facility, or intermediate care facility for individuals with intellectual disabilities (ICF/IID), - in accordance with 42 CFR 440.70(c). except that home health services may be provided in an ICF/IID for a short term, acute care illness if the service is not required to be provided by the facility and the provision of the service prevents the recipient’s transfer to a nursing facility.

He-W 553.0~~43~~ Provider Participation.

(a) All home health care ~~providers~~ agencies shall:

(1) Hold a current New Hampshire state license as a home health care ~~provider agency~~, in accordance with RSA 151:2-b, I, and He-P 809;

(2) Be certified to participate in the medicare program; and

(3) Be a New Hampshire enrolled medicaid provider.

(b) When there is no licensed and certified home health care ~~provider agency~~ in the area, an ~~independent registered nurse~~ may provide home health ~~aide or skilled nursing~~ services if the ~~registered nurse~~ RN:

(1) Is currently licensed to practice in the state in which he/she practices;

(2) Receives written orders from the recipient's physician;

(3) Documents the care and services provided in accordance with He-W 553.0~~54~~; ~~and~~

(4) Is a NH enrolled medicaid provider of home health services.

He-W 553.0~~54~~ Required Documentation.

(a) Home health care ~~providers agencies~~ and ~~skilled independent~~ nurses shall maintain complete and timely records for each recipient receiving services in accordance with He-W 520, and this part.

~~(b) Where a home health care agency or independent nurse, and has failure to maintain records in accordance with He-W 520 and this part pursuant to (a) above, the department shall be entitled the department to recoupment of state or federal medicaid payments made as permitted by 42 CFR 455, 42 CFR 456 and 42 CFR 477.~~

~~(c)~~ In addition to the requirement set forth in (a) above, home health care ~~providers agencies~~ and ~~skilled independent~~ nurses shall maintain the documentation required by this part and He-W520 to support claims submitted for reimbursement for a minimum of 6 years or until the resolution of any legal action(s) commencing ~~cedded~~ within the 6 year period, whichever is longer.

~~(d)~~ Recipient records shall include all of the following:

(1) Written orders for initial home health services and certification of the need for home health services signed by the recipient's physician specifying:

a. The frequency of medication and treatment to be administered; ~~and~~

b. The period of time to be covered by the orders; ~~and~~

c. The occurrence of a face-to-face encounter which is related to the primary reason the recipient requires home health services indicating the time frame the encounter took place, the date, the practitioner who conducted the encounter, and the practitioner's findings in accordance with He-W 553.06(a) below;

(2) ~~For recipients under the age of 21, a~~ recipient history and a health assessment ~~for recipients under the age of 21~~ with an appropriate pediatric tool completed upon admission

by the RN or appropriate rehabilitation skilled professional in accordance with 42 CFR 484.55;

(3) For recipients over the age of 21, a recipient history and ~~or~~ a health assessment for adults, completed upon admission by the ~~home health care provider's RN registered nurse~~ or appropriate rehabilitation skilled professional in accordance with 42 CFR 484.55;

(3) Documentation at least every 60 days to indicate review of the recipient's health assessment by the ~~RN registered nurse~~ or appropriate rehabilitation skilled professional in accordance with 42 CFR 484.55;

(4) A written person-centered plan of care which shall include the following~~including~~:

- a. The diagnosis related to the recipient's need for home health services;
- b. Other diagnoses;
- c. An assessment of the recipient's mental alertness and cognitive level;
- d. Measurable recipient goals;
- e. Types of services and equipment required;
- f. Frequency of home health services and locations where services are to be performed that accounts for the individual's needs;
- g. Anticipated length of treatment;
- h. General prognosis;
- i. Rehabilitation potential;
- j. Functional limitations including activities of daily living;
- k. Activities permitted;
- l. Nutritional requirements;
- m. Medications;
- n. Treatments;
- o. Safety measures required to protect the recipient from potential injury;
- p. Services being provided by non-paid caregivers involved in the recipient's treatment and any related education or training needs of the caregivers; and
- q. Discharge plans;

(5) Documentation at least every 60 days, to indicate review of the written plan of care by the recipient's physician ~~by the registered nurse or licensed physical therapist in accordance with the recipient's physician's orders;~~

(6) Auditable, paper, or electronic service notes for each service provided to the recipient identifying:

- a. Name of recipient;
- b. Date of service;
- c. Location (s) where service was provided, if other than the recipient's primary residence;
- d. Primary purpose of the home health services;
- e. Description of services provided;
- f. Amount of direct care time spent providing each home health service;
- g. Condition of the recipient at the time the service was provided, and any change in recipient's mental or physical condition;
- h. Any progress the recipient has made towards goals identified on the written plan of care;
- i. An explanation of any variation from the ~~prescribed~~ written plan of care; and
- j. Name, title, and written or electronic signature of the individual providing the home health service; and

(7) Documentation of any consults or meetings regarding the recipient's care, which also indicates the results of the consult or meeting.

~~(d) Verbal orders shall be signed by the physician who issues the order within 30 days of the date the verbal order is issued.~~

(e) Home health care ~~providers~~ agencies and ~~independent skilled~~ nurses shall make the documentation required by this part and He-W 520 available for review to the department upon the request of the department.

He-W 553.065 Covered Services.

(a) Services shall be covered when:

(1) A face-to-face encounter with the recipient occurs 90 days before the start of the home health services or 30 days after the start of services, is documented in compliance with He-W 553.05(d) above and performed by one of the following medicaid enrolled providers:

- a. The recipient's physician;

b. The following non-physician practitioners may perform the face-to-face encounter and shall communicate the clinical findings of the face-to-face encounter to the recipient's physician who shall incorporate them into the recipient's medical record:

(i). A nurse practitioner or clinical nurse specialist working in collaboration with the recipient's physician;

(ii). A certified nurse midwife; or

(iii). a physician assistant under the supervision of the recipient's physician.

[K1]

(~~b~~a) Covered services shall be those home health services, regardless of diagnosis, the need for which is consistent with the nature of the recipient's condition and accepted standards of medical and nursing practice, ~~and provided at the recipient's place of residence, as defined in 42 CFR 440.70 (e).~~

(~~c~~b) Covered home health services shall include:

(1) Skilled nursing services in accordance with the written plan of care including:

- a. Skilled observation and assessment of the recipient's status, including available support system and physical environment;
- b. Administration of medications, including intramuscular and intravenous medications;
- c. Insertion and irrigation of indwelling urinary catheters;
- d. Administration of enemas, providing ostomy care, and other related procedures to provide assistance with bowel evacuation;
- e. Skilled respiratory care including suctioning, tracheostomy care, administration of inhalation therapies, and chest physiotherapy;
- f. Wound care, care of decubitus ulcers, and treatment of other extensive skin disorders;
- g. Administration of enteral feedings;
- h. Rehabilitative nursing procedures such as the initiation and supervision of bowel and bladder training programs;
- i. Education, specific to the recipient's condition, provided to the recipient and significant others involved with the recipient;
- j. Pre-filling of medication administration devices such as pill planners;
- k. Medication reconciliation; and
- l. Education about medication therapeutic effects, side effects, and adherence to prescribed regimen;

(2) Home health aide services ~~performed by a licensed nursing assistant, in accordance with the written plan of care,~~ including assistance provided to a recipient for the following:

- a. Personal hygiene, including bathing, grooming, dressing, and changing bed linens, when there is a medical need and it is documented in the care plan;
- b. Ambulation and movement, including range of motion exercises, turning, positioning, and transferring;
- c. Nutritional care, including feeding and hydration;
- d. Elimination, including toileting and bowel ~~or~~ bladder training;
- e. Assistance with the use of adaptive prosthetic and orthotic devices;
- f. Assistance with self-administering medications, when the assistance provided by the aide does not require the skill of a licensed nurse;
- g. Administration of medications by a medication ~~LNA~~ ~~licensed nursing assistant~~ or by an ~~licensed nursing assistant LNA~~ if delegated by a ~~RN or LPN~~ ~~[K2]~~ ~~licensed nurse~~ in accordance with RSA 326-B:14, II-a;
- h. Activities that are directly supportive of skilled therapy services;
- i. Other medically related activities which can safely and effectively be provided by a ~~licensed nursing assistant LNA~~, including simple dressing changes;
- j. ~~Services such as L~~ight housekeeping ~~and meal preparation only~~ when there is documentation that no other support in the home exists, and ~~only~~ when such services are directly related to the recipient's medical condition and care needs and is documented in the written plan of care; and
- k. Tasks properly delegated to the ~~licensed nursing assistant LNA~~ by the supervising ~~licensed nurse RN~~ pursuant to RSA 326-B:28~~;~~:-

(3) Physical therapy, speech therapy, ~~and~~ occupational therapy, ~~speech pathology and audiology services provided a licensed therapy provider and~~ subject to the limits specified in He-W 530;

(4) Durable medical equipment, medical supplies, prosthetics and orthotic devices, ~~and telemonitoring equipment~~, when prescribed by the attending physician and in accordance with the requirements in He-W 571; and

(5) Office visits, when the recipient receives services provided by an advanced practice registered nurse (APRN) at the location of the home health care ~~provider agency~~ as an alternative to visiting a physician's office for treatment.

He-W 553.0~~76~~ Non-Covered Services. Non-covered home health services shall include:

- (a) Physician services;

- (b) Social worker services;
- (c) Nutritionist services;
- (d) Visits provided solely for the purpose of supervising the ~~licensed nursing assistant~~ LNA;
- (e) Services provided by ~~an LNA-licensed nursing assistant, RN, or LPN~~ or other licensed therapy provider skilled nurse which are not medically related and which constitute routine household activities, day care, or recreational services ~~including such services as light housekeeping and meal preparation, except as described in He-W 553.05(2)(j);~~
- (f) Services rendered without a physician's signed order;
- (g) Any service whose primary purpose is providing emotional support;
- (h) Any service whose primary purpose is the care or supervision that would be required by any individual of the recipient's chronological age;
- (i) Any service, for a recipient under the age of 21, -whose purpose is to implement follow-through on a behavioral treatment plan such as services to assist or provide supervision ~~to a recipient under the age of 21~~ with a behavioral treatment plan;
- (j) Drugs and biologicals;
- (k) Meals delivered to the home; and
- (l) Homemaker services considered to be general household activities, except as described in He-W 553.06(2)(j), including:
 - ~~(1) Preparing meals;~~
 - (12) Keeping a safe environment in areas of the home used by the recipient ~~individual needing the service;~~
 - ~~(3) Changing bed linens;~~
 - (24) Performing house cleaning;
 - ~~(35)~~ Rearranging furniture to assure that the recipient can safely reach necessary supplies or medication;
 - ~~(46)~~ Completing laundry tasks ~~essential to the recipient's comfort and cleanliness;~~ and
 - ~~(57)~~ Assisting the recipient with purchasing food and helping with the preparation of meals and special diets.

APPENDIX

RULE	STATE OR FEDERAL STATUTE THE RULE IMPLEMENTS
He-W 553.01	
He-W 553.02	42 CFR 440.70; 42 CFR 440.210; 42 CFR 440.220; 42 CFR 441.15; RSA 326-B
He-W 553.03	42 CFR 440.70; 42 CFR 440.210; 42 CFR 440.220
He-W 553.04	42 CFR 440.70(d); RSA 151:2-b,I
He-W 553.05	42 CFR 440.70; 42 CFR 440.230; 42 CFR 484.55
He-W 553.06	42 CFR 440.70; 42 CFR 441.15; RSA 326-B
He-W 553.07	42 CFR 440.230(d)